

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 11TH DECEMBER 2006 / 20TH AGRAHAYANA 1928

MFA.No. 794 of 1994()

OPMV.167/1992 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, ATTINGAL

APPELLANT: PETITIONER:

V.VELAPPAN NAIR, GIRIJA SADAN,
CHEMMANKUZH, AMBALAMUKKU,
KATTAKADA, THIRUVANANTHAPURAM.

BY ADV. SRI.M.S.ANIL KUMAR

RESPONDENTS: RESPONDENTS:

1. MANAGING DIRECTOR, K.S.R.T.C., THIRUVANANTHAPURAM
2. PRABHAKARAN NAIR, PALAVOOR MELE POOVAN VEEDU,
AMACHAL P.O., KATTAKKADA, THIRUVANANTHAPURAM
(DIED – DELETED)
3. UNITED INDIA INSURANCE CO. LTD.,
THIRUVANANTHAPURAM, REPRESENTED BY ITS
DIVISIONAL MANAGER,.

2ND RESPONDENT IS DELETED FROM THE PARTY ARRAY
AS PER ORDER DATED 24.5.2005 ON I.A.NO.1420/2005.

R1 BY ADV. SRI.SAJEEVKUMAR K.GOPAL, SC, KSRTC
R3 BY ADV. SRI.P.R.RAMACHANDRA MENON
SHRI.JOHNSON P.JOHN, SC, KSRTC

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON
11/12/2006, ALONG WITH MFA NO. 1040 OF 1994, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:

K.T. SANKARAN, J.

M.F.A.NOS.794 & 1040 OF 1994

Dated this the 12th day of December, 2006

JUDGMENT

M.F.A.No.794 of 1994 arises out of O.P.(MV) No.167 of 1992, Motor Accidents Claims Tribunal, Attingal. The appellant, Velappan Nair, was the claimant who was riding the motor bike which was involved in the accident. M.F.A.No.1040 of 1994 arises out of O.P.(MV) No.168 of 1992, the appellant being the claimant before the court below, namely, Raman Nair, who was the pillion rider of the motor bike.

2. The accident took place on 8.1.1990 at 6.15 p.m. The motor cycle was proceeding from north to south, while the KSRTC bus, driven by Prabhakaran Nair, the second respondent in the claim petitions, was proceeding from south to north. The case of the claimants is that the accident took place because of the rash and negligent driving of the bus. The driver of the bus as well as the first respondent, KSRTC, contended that the accident took place because of the

rash and negligent riding of the motor bike. The Tribunal tried both the cases together. The claimant in O.P.(MV) No.167 of 1992 was examined as PW3 and the claimant in O.P.(MV) No.168 of 1992 was examined as PW1. The driver of the KSRTC bus was examined as RW1. It was contended by the second respondent that the bus was stationary at the relevant time, when it was stopped to alight the passengers. It was contended that the motor bike hit against the KSRTC bus because of the rash and negligent riding of the motor bike. Ext.A2 scene mahazar was relied on by the Tribunal. The scene mahazar shows that the point at which the accident took place is 1.75 metres east of the western tarred end of the 5.90 metres wide road. Ext.B1 series of photographs were also relied on, which would show that the motor bike was lying at the left side of the bus. The evidence disclosed that the motor cycle hit on the left front side of the bus. There was no explanation why the motor bike came to the wrong side of the road. The Tribunal analysed the evidence and came to the conclusion that the accident took place

because of the rash and negligent riding of the motor bike and that the second respondent, driver of the bus, could not avoid the accident.

3. Since it was found that the accident occurred because of the negligence of the claimant in O.P.(MV) No.167 of 1992, the Tribunal held that he is not entitled to compensation as provided under Section 166 of the Motor Vehicles Act. But he is entitled to compensation only under Section 140 of the Motor Vehicles Act. Accordingly, a sum of Rs.12,000/- was awarded in favour of the claimant in O.P.(MV) No.167 of 1992. The Tribunal also found that the claimant in O.P.(MV)No.168 of 1992 is entitled to a sum of Rs.47,500/- as compensation. However, it was held that the claimant being a pillion rider and a gratuitous passenger, the insurer in respect of the motor bike, namely, the United India Insurance Company Limited is not liable to pay the compensation. This finding of the Tribunal is correct in law as can be seen from the decision of the Supreme Court in **United**

India Insurance Company Limited v. Tilak Singh and others ((2006) 4 SCC 404). It is not disputed that the insurance policy is only a statutory policy. Therefore, the risk of death or bodily injury in respect of the gratuitous passenger is not covered by the policy.

The Tribunal has considered the facts and evidence and has come to the correct conclusion. No interference is called for in these appeals. The appeals are accordingly dismissed. However, without any order as to costs.

(K. T. SANKARAN)
Judge

ahz/

K.T.SANKARAN, J.

M.F.A.NOS.794 & 1040/1974

JUDGMENT

11th December, 2006
